IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.155 OF 2006

Jamir @ Pandya Unus Guhagarkar : Applicant.

versus

The State of Maharashtra : Respondent.

Mr.A.P.Mundergi with Mr.P.P.Runwal for the applicant.

Miss.M.M.Deshmukh, APP, for the State.

CORAM : V.M.KANADE, J.

DATED : 10th February 2006.

ORAL ORDER

1. Heard learned counsel appearing for the applicant and learned APP for the State. The applicant was arrested in connection with offence which is registered at Shahupuri Police Station, Dist.Kolhapur for the offences punishable under sections 302, 307, 323, 506, r/w 34 of the Indian Penal Code. Charge sheet has been filed. All

other accused have been released on bail.

2. The prosecution case is that the deceased and his friends had gone to the house his friend where they were having a party and in that party alcohol was consumed by all of them. When the deceased was asked by his friend to bring some water, while going towards pan shop, he dashed against the applicant and there were some altercation between two. Applicant along with others went to the place where the deceased and his friends were having alcohol and, the friends of the deceased were told that they should look after the deceased otherwise they would assault him. At that time deceased attacked the applicant with stick. It is alleged that the applicant snatched the stick from the hands of deceased Sunil and gave one blow of the said stick on his head and also assaulted other two friends of the deceased. The deceased Sunil however succumbed to the head injury and died. Other two were injured.

3. It is submitted by the learned APP appearing for the State that 4-5 witnesses were seen the accused assaulting the deceased by stick

on his head and, therefore, involvement of the present applicant is clearly made out. Further she invited my attention to the order passed by this Court on 29/11/2005 wherein it is observed that the applicant in the present case had assaulted the deceased on his head with a wooden stick and, therefore, all other accused were released on bail.

4. Considering the admitted facts, in my view, the applicant is entitled to be released on bail. The applicant is in jail since July 2005. Charge sheet has been filed. Applicant had assaulted the deceased after initially the deceased rushed to the applicant with stick and, the applicant was not armed with any weapon when they went to the place where the deceased and his friends were having the party. All these circumstances show that there was a sudden fight without any premeditation. There are no criminal antecedents against the present applicant. Therefore, it cannot be said that the applicant is a hardened criminal. The applicant, is, therefore, entitled to be released on bail. In the result, the applicant to be released on bail in the sum of Rs.5,000/- [Rupees Five Thousand

only] with one or two sureties in the like amount. The applicant shall report to the Shahupuri Police Station, Dist. Kolhapur twice in a month. The applicant shall not instigate the witnesses or tamper with the prosecution evidence. If any such complaint is received against the applicant, the bail granted to him is liable to be cancelled. Application is disposed of accordingly.

[V.M.KANADE,J]